



CERTIFICATE OF MAILING

Date of mailing: ²⁹August 28, 2001

This certifies that the accompanying communication is being mailed on the above date of mailing, by prepaid FIRST CLASS MAIL properly addressed to:

Assistant Commissioner for Patents
Washington DC 20231

Carl C. Kling
Carl C. Kling

²⁹
August 28, 2001
Date

Assistant Commissioner for Patents
Washington DC 20231

Art Unit: 1761
Docket: RE - 001
Date: AUGUST 29, 2001

Application of: **Robert W. Brown and Bruce A. Kade**

Serial Number: 09/585,788 Filing Date: June 5, 2000

(Reissue application Certificate of Mailing Date June 1, 2000)

Examiner: **Lien Tran**

Title: **ENGLISH MUFFIN BAGEL**

DECLARATION OF BRUCE A. KADE

BRUCE A. KADE DECLARES AS FOLLOWS::

1. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United

States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. Statements made under information and belief are identified as such, and all other statements are statements of fact.
3. I am an inventor of the captioned reissue patent application, and consider myself skilled in the art of baking bagels and related yeast-risen breads, with more than eight years experience as an owner of a deli/bakery shop with both take-out and eat-in business.. As such owner, I managed production and sales of delicatessen and bakery items, including such yeast-risen breads as pastries, nut bread loaves and traditional bagels, and other breads, including pancakes, some of which do not use yeast.
4. I have executed a new reissue declaration. It contains a statement that all errors which are being corrected in the reissue application up to the time of filing of the declaration arose without any deceptive intention on the part of the applicants.
4. I have familiarized myself with the prior art cited in Office Action dated 6/29/2001, including with the Boston Globe article giving recipes for bagels, pita bread and English muffins.
5. The Boston Globe article properly differentiates between the three items – bagel, pita bread and English muffin. The Examiner appears to have confused

these items, each of which is well known as a separate item. Ordinary customers recognize these items when displayed, distinguishing them from each other even if they are displayed without identification.

6. The standard bagel is a specialty item often sold in a dedicated shop known as a bagel shop or bagelry. I am not aware of any shop dedicated to the English muffin or to pita bread, although both are sold in supermarkets and bakery shops.
7. Individual bagels are often sold with a "schmier" of cream cheese, and are sometimes sold with a portion of lox, a smoked salmon delicacy. English muffins are more likely to be sold simply buttered, or spread with butter and jelly – and are more likely to be sold by the package or by the dozen than to be sold separately.
8. As to the Examiner's comment concerning Claims 1-4 and "...as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention." I state that we inventors were fully in possession of the invention at the time of first patent filing, that we had made and eaten English muffin bagels according to the teaching of the patent. I further state that we described the

invention in our patent application sufficiently for others to practice the invention without experimentation.

9. The Examiner appears to confuse the terms “batter” and “dough.” This is understandable, for in many contexts they are similar. Both, for instance, may contain yeast and flour, although pancake batter usually has baking powder instead of yeast – and both may be precursors of yeast-risen breads. The process activity patterns in bagel dough and English muffin batter, however, are quite different. The activity pattern in English muffin bagel dough is identical to the activity pattern in bagel dough – up to the point where traditional bagels are boiled and where English muffin bagels are not boiled, but are set for a long rise time – before baking..

10. The Examiner appears to be seeking fixed periods of rise time, such as can be measured in minutes. This is not common in baking, where rise time is a function of temperature, yeast characteristics, yeast nutrients present (primarily sugar, which can be added in various ways and in various amounts, or left out entirely) and other variables including the weather. The extent of rising of yeast breads is often measured in terms of “doubling in bulk” rather than in minutes.” The extent of rising may be measured in other ways, such as by the presence or absence of bubbles, even by appearance. Kneading,

which can differ from person to person or from machine to machine, may affect rise time as well.

11. Batter, even thick batter, can be poured from a pitcher and will spread after it is poured. There is no significant rising of batter, because bubbles are not permanently trapped. A typical batter is pancake batter. Pancake batter, in a deli which serves pancakes, typically is made in batches greater than single-serving batches, and kept handy to make pancakes for additional customers. Unused batter may be kept for a reasonable period of time, even overnight in a refrigerator, with no perceptible deterioration or change. A reasonable dictionary definition of the term "batter," in context of yeast-risen breads, is: "A thin mixture of flour, eggs, and milk or water, beaten together and used in cooking. *Pour some batter into the frying pan.*" Dalgish, "Webster's Dictionary of American English, Random House, NY ISBN 0-679-76425-9 Page 59.

12. Dough is too thick to pour. Dough typically rises as bubbles of carbon dioxide from the warmth-induced yeast activity are trapped by elastic gluten. A reasonable dictionary definition of the term "dough," in context of yeast-risen breads, is: "Flour combined with water, milk, etc. in a thick mass for

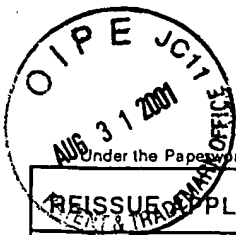
baking. *We made our own dough for apple pie.*" Dalgish, "Webster's
Dictionary of American English, Random House NY ISBN 0-679-76425-9
Page 237.

13. Yeast-risen breads made by letting dough rise and by letting batter bubble
may have different tastes and different textures. The tastes may, for example,
have differing sourness. The textures may, for example, have different
bubbles of carbon dioxide from the yeast trapped in bubbles of gluten in
dough prior to baking, or not trapped in batter as bubbles rise to the surface
and pop.

14. In summary, there are significant differences between standard bagels,
English muffin bagels, pita bread, English muffins and other yeast-risen,
unleavened, and baking powder breads and cakes. Some of the differences are
related to ingredients, but many of the differences are related to process.



Bruce A. Kade



REISSUE APPLICATION DECLARATION BY THE INVENTOR

Docket Number (Optional)

RE-001

As a below named inventor, I hereby declare that:

My residence, mailing address and citizenship are stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is described and claimed in patent number 5,759,606 granted June 2, 1998, and for which a reissue patent is sought on the invention entitled

ENGLISH MUFFIN BAGEL

the specification of which

☐ is attached hereto.

☒ was filed on 6/5/00 as reissue application number 09/585,788
and was amended on _____
(If applicable)

I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.

I verily believe the original patent to be wholly or partly inoperative or invalid, for the reasons described below. (Check all boxes that apply.)

☐ by reason of a defective specification or drawing.

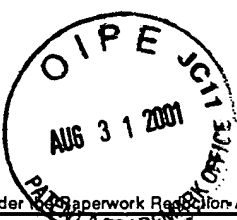
☒ by reason of the patentee claiming more or less than he had the right to claim in the patent.

☒ by reason of other errors.

At least one error upon which reissue is based is described below. If the reissue is a broadening reissue, such must be stated with an explanation as to the nature of the broadening:

The omission of the prior art step of boiling was not clarified as a negative limitation in the claims.

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(REISSUE APPLICATION DECLARATION BY THE INVENTOR, page 2) <i>up to the time of signing this declaration</i>		Docket Number (Optional) RE-001	
All errors corrected in this reissue application, arose without any deceptive intention on the part of the applicant. As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the United States Patent and Trademark Office connected therewith.			
Name(s)		Registration Number	
Correspondence Address: Direct all communications about the application to:			
<input type="checkbox"/> Customer Number	<div style="border: 1px solid black; width: 200px; height: 20px;"></div>	Place Customer Number Bar Code Label here	
Type Customer Number here			
<input checked="" type="checkbox"/> Firm or Individual Name	Carl C. Kling		
Address	PO BOX 305		
Address			
City	HAWTHORNE	State	NY
Country	US	Zip	10532
Telephone	914/525-8530	Fax	203/422-2546
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.			
Full name of sole or first inventor (given name, family name) Robert W. Brown			
Inventor's signature <i>Robert W. Brown</i>		Date August 29, 2001	
Residence 2112 Old Vestal Rd, Vestal, NY 13850		Citizenship US	
Mailing Address 2112 Old Vestal Rd, Vestal, NY 13850			
Full name of second joint inventor (given name, family name) Bruce A. Kade			
Inventor's signature <i>Bruce A. Kade</i>		Date 8/29/2001	
Residence 10 Cross St, Katonah, NY		Citizenship US	
Mailing Address 10 Cross St. Katonah, NY 10536			
Full name of third joint inventor (given name, family name)			
Inventor's signature		Date	
Residence		Citizenship	
Mailing Address			
<input type="checkbox"/> Additional joint inventors are named on separately numbered sheets attached hereto.			